for the purpose of ascertaining the evidence upon which his opponent proposes to prove his case, nor is it the function of particulars to fill gaps in a statement of claim from which a material statement has been omitted."

In paragraph 38 at page 19 the following passage appears:—

"No precise rule can be laid down as to the degree of particularity required in any given case, but as much certainty and particularity is insisted on as is reasonable having regard to the circumstances and nature of the acts alleged."

We are of the view that, subject to one observation which will be made hereafter, the law is correctly stated by Choor Singh J. in *Gwee Kim Bock* v. *Singapore Glass Manufacturers Co. Ltd.*[1] where in his judgment the learned judge said:—

"In my opinion, when a plaintiff claims damages for injuries received in a road accident, he must, in his statement of claim, give sufficient particulars to enable the defendant, first, to identify the accident in question and, secondly, to know what exactly is the case he has to answer. It is not sufficient to state merely the particulars of the defendant's negligence. The plaintiff must give particulars of his own situation at the time of the accident and state the circumstances under which the defendant collided with him. Particulars of a defendant's negligence do not make any sense unless and until it is known where the plaintiff was and what he was doing at the time of the collision."

We would add however that by "what he was doing" in the above passage it should be clearly understood that it means no more than "whether he was in motion and, if so, the direction in which he was moving."

It should be noted that in the present case the plaintiff was a pedestrian who could have been lawfully anywhere on the road. In his statement of claim he has merely stated that he was "lawfully on Jalan Besar, at or near its junction with Lorong Lalat." In our view this statement gives insufficient particulars of the case which is intended to be made against the defendant at the trial. It seems to us that, in this case, the plaintiff should indicate to the best of his recollection his position upon Jalan Besar when he was run into and knocked down. Not only should he do that but he should also say whether at that time he was standing or was in motion and, if in motion, the direction in which he was moving. It seems to us that these particulars are necessary so that the defendant will know the case that is intended to be made against him at the trial.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Murphy & Dunbar; Allen & Gledhill.*

PEARLSON ENTERPRISES LTD. v. HONG LEONG CO. LTD.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Buttrose J.) November 3, 1967]

[Singapore—Federal Court Civil Appeal No. Y.38 of 1966]

Practice and Procedure — Slip rule — Amendment of order of Federal Court — Order of Federal Court allowing appeal did not specify that costs paid in court below should be refunded to successful appellants — Whether error in order arising from accidental slip or omission which could be corrected under R.S.C. 1934, O. XXIX r. 11.

Practice and Procedure — Costs — Taxed costs paid in lower court — Entitlement of successful appellant to refund of where formal order was silent — Amendment of order.

[Editorial Note: In *Ling Nam Rubber Works* v. *Leong Bee & Co. (No. 2)* [1968] 1 M.L.J. 265 the Federal Court allowed interest on the amount to be repaid.]

Cases cited in argument:—

(1) *Evans* v. *Main Colliery Ltd.* (1915), 31 T.L.R. 127.

(2) *Re Geipel's Patent* [1904] 1 Ch. 239.

FEDERAL COURT.

K. A. O'Connor for the appellants.

Ho Kian Ping for the respondents.

The formal order of the Federal Court dated August 7, 1967 allowing the appeal of the defendants (judgment reported in [1968] 1 M.L.J. 24) was silent on the question of the successful appellants' entitlement to a refund of the taxed costs paid by the appellants to the respondents in the court below. The respondents having declined to repay these costs, the appellants applied by motion to amend the said formal order of the Federal Court by inserting an additional clause in the order requiring that the respondents should repay the costs paid in the court below. The appellants relied on Order XXIX rule 11, commonly known as the slip rule. The respondents opposed the motion, contending, *inter alia,* that the order expressed the intention of the court, that there had accordingly been no slip or omission and that the appellants' only remedy was to commence fresh proceedings for recovery of the costs paid in the court below. They also contended that some of the costs had been paid in respect of part of the claim for which the appellants had consented to judgment in the court below. The appellants had offered, before the filing of the motion, to reduce that claim by $500 in respect of the costs relating to that part of the claim.

In an oral judgment the Federal Court held that it had jurisdiction to amend its own order under Order XXIX rule 11. The order would be amended to provide that the costs paid in the court below, less the sum of $500 in respect of

the costs on that part of the claim to which the appellants had consented, should be refunded by the respondents to the appellants.

Motion granted.

Solicitors: *Drew & Napier; Chung & Co.*

WONG TECK PING v. WONG AI KING

[O.C.J. (Lee Hun Hoe J.) February 16, 1968]
[Sibu — Matrimonial Causes No. 12 of 1967]

Family Law — Divorce — Cruelty — What amounts to — Standard of proof — Matrimonial Causes Ordinance (Sarawak Cap. 94) s. 6(1)(g) and (3)(b).

This was a petition by a husband seeking divorce on ground of cruelty under section 6(1)(g) of the Matrimonial Causes Ordinance (Cap. 94). The parties were married at the Methodist Church at Sibu in 1951. There were three children of the marriage.

In support of his charge of cruelty, the petitioner adduced evidence of sixteen acts on the part of the respondent which he alleged had amounted to cruelty. Many of the incidents were not corroborated, and for everyone of them, the respondent was able to offer an explanation.

Held: (1) to constitute cruelty under section 6(1)(g) of the Matrimonial Causes Ordinance, there must be substantial physical and mental suffering. The effect of the word "substantial" is that for cruelty to be a ground for divorce, the petitioner must establish that the acts which he rely on to prove cruelty affect his health physically or mentally;

(2) the standard of proof of cruelty is similar to that in a criminal case. The onus was on the petitioner to prove cruelty beyond reasonable doubt. As the onus had not been discharged, the petition was dismissed.

Per Curiam: "the court has a discretion to dissolve the marriage under section 6(3)(b) of the Matrimonial Causes Ordinance.... Section 6(4) of the said Ordinance makes it clear that before such a discretion is exercised, the court must take into consideration how the interests of the children of the marriage or of either party will be affected if the marriage is dissolved."

Cases referred to:—

(1) *Beal* v. *Beal* [1951] P. 48 & 49.

(2) *Beard* v. *Beard* [1946] P. 8.

(3) *Richardson* v. *Richardson* [1950] P. 16.

(4) *Squire* v. *Squire* [1948] 2 All E.R. 51 & 55.

MATRIMONIAL CAUSES.

Chew Peng Cheng for the petitioner.

C. T. Wong for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe J.: The parties were married on 26th January, 1951 according to the rites of the Methodist Church at Sungei Merah, Sibu. After the marriage they lived with the petitioner's parents for some time. Then they moved out and lived at various places until finally at 12, Raminway, Sibu. They have three children. The eldest is a girl and the two younger children are boys. Their ages are 17, 15 and 12 years respectively.

The petitioner charged the respondent with cruelty since marriage. Following an answer from respondent leave was obtained to amend paragraph 6 of the petition to the effect that there was a previous divorce proceeding in this court in 1952. In that case (Sibu High Court Civil Case No. 61 of 1952) petitioner also charged the respondent with cruelty. On 28th August, 1952 in a very brief judgment, Blagden J. dismissing the petition observed:—

> "This is a sad case of two young people who should be happily married together but for some reason are not. There are undoubtedly faults on both sides but I am bound to say I think the majority of the faults lie on the wife's side."

Since then they came together again and had added two boys to the family. About sixteen years later the petitioner brings another petition against respondent and seeks to introduce incidents which were decided in 1952. I do think petitioner can do so by reason of *res judicata.* But he can adduce evidence of acts of cruelty after that period. In support of his charge of cruelty he pleaded 16 acts on the part of respondent which he alleged amounted to cruelty. Some of the allegations were abandoned as no reference was made or evidence called to support them.

The respondent denied all the charges against her and in her answer charged the petitioner with assaulting her and claimed for maintenance for herself and children. Petitioner admitted quarrelling with respondent on many occasions and assaulting her on one or two occasions. Respondent also admitted to quarrelling but denied injuring petitioner intentionally. Both admitted that every time they quarrelled they had patched up. According to petitioner the most serious incident occurred on 4th April, 1967 when respondent threw empty bottles at him and the splinters from the bottles caused cuts on him which necessitated treatment in the hospital. Since that incident petitioner had left the matrimonial home and went to live with his mother. Respondent maintained that the injuries resulted accidentally.

Respondent admitted to locking herself up in petitioner's office on one occasion. She alleged that she had done so because petitioner had not given her the monthly housekeeping money. She said that the damage to the office machinery was due to her being pushed by petitioner when the machinery fell down. On that occasion she sustained a cut on her wrist when she hit a book case.

Wong Teck Sing (P.W.6) corroborated petitioner in some incidents but he was clearly biased. First he is the younger brother of petitioner and has demonstrated in no uncertain terms his dislike for respondent. Petitioner's mother also gave evidence. She told the court how after